

# **REPORT OF COURT OF APPEALS DEPENDENCY APPEALS WORK GROUP**

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## **Dependency Appeals Work Group Members:**

Chief Judge William C. Whitbeck  
Judge Michael R. Smolenski  
Judge Donald S. Owens  
Sandra Mengel  
Larry Royster  
Carl Gromek  
Michael Murray  
Corbin Davis  
Debra Gutierrez-McGuire  
Judge Donna Morris  
Judge Sheila Gibson Manning  
Judy Hartsfield

## **Delay Reduction Work Group Members:**

Judge Hilda R. Gage  
Ex Officio: Judge Harold Hood  
Judge Michael R. Smolenski  
Chief Judge William C. Whitbeck  
Judge Brian K. Zahra  
Kim Hauser  
Mary Lu Hickner  
Sandra Mengel  
Larry Royster

## **Contributing Judges:**

Judge Richard A. Bandstra  
Judge Kirsten Frank Kelly  
Judge Patrick M. Meter  
Judge Helene N. White  
Judge William B. Murphy

# REPORT OF COURT OF APPEALS DEPENDENCY APPEALS WORK GROUP

*This document is substantially comprised of the Work Group's Preliminary Report which can be found on the Court of Appeals website at [http://courtofappeals.mijud.net/pdf/Dependency Appeals Preliminary Report 110702.pdf](http://courtofappeals.mijud.net/pdf/Dependency%20Appeals%20Preliminary%20Report%20110702.pdf) Annotations that document subsequent action by the Work Group are set apart in distinctive text boxes that can be quickly located by searching for NOTE.*

## I. EXECUTIVE SUMMARY

- **Statement of the Problem:** The Court of Appeals faces a serious problem with respect to the length of time it takes to receive and resolve dependency appeals, defined generally as those appeals involving a termination of parental rights (TPRs) and those involving custody of minor children. Although such appeals are expedited, on average in 2001 the Court disposed of these appeals within 325 days of filing. Further, there was a slight *increase* in disposition time in the first six months of 2002. Even without this increase, the overall time to dispose of these appeals is not acceptable and should be substantially reduced.
- **Breaking Down the Process for Dependency Appeals**
  - The Court of Appeals handles two primary types of dependency appeals: appeals arising from orders terminating parental rights due to neglect or abuse and appeals arising from orders or opinions involving custody of minor children in domestic relations cases. As a whole, the latter category presents no major problems in terms of time on appeal. The former category presents significantly greater problems for all participants.
  - There are four stages in the processing of an appeal at the Court: *Intake*, the *Warehouse*, *Research*, and the *Judicial Chambers*. On average in 2001, the time to dispose of all appeals decided by opinion was 654 days. On average in 2001, the time to dispose of dependency appeals was 325 days. On average in 2002, this time was 321 days. In the first quarter of 2003, this time was 279 days.
- **Case Differentiation** Differentiating between types of appeals is vitally important to reducing time on appeal. The Court has had a long history of expediting dependency cases and, through its recently adopted delay reduction plan, has moved into case differentiation within the *Judicial Chambers* by dividing such appeals into four categories: custody/TPR appeals, other expedited appeals, summary panel appeals, and regular/complex panel appeals.

- **The Court's Current Delay Reduction Plan** Under the Court's current delay reduction plan, the Court anticipates the following time reductions, accumulating to 11 days on average, that will directly affect dependency appeals.
  - *Intake: 7 days* by reducing the time for transferring the lower court record.
  - *Research and Judicial Chambers: 4 days* by precluding adjournment for summary panel appeals.
- **New Time-Specific Proposals for Reducing Delay in Dependency Appeals.** The following recommendations will, if adopted, save an additional 70 days in processing dependency appeals, starting from the entry of the order terminating parental rights and continuing through issuance of the opinion on appeal. Forty-two of the days will be saved between the order terminating parental rights and the filing of the claim of appeal. Twenty-eight of the days would be saved in time on appeal.

*NOTE: Work Group action on these recommendations is reported below commencing at page 10.*

- *Recommendation 1: Shorten the time in which the respondent parent can request counsel. 7 days.*
- *Recommendation 2: Amend the court rules to establish an automatic claim of appeal such as is employed in criminal appeals under MCR 6.425(F)(3) and provide a new court form that would function as the order appointing counsel, the order for transcripts and as the claim of appeal. 21 days.*
- *Recommendation 3: Set deadlines for issuance of the claim of appeal / order appointing counsel / transcript order by the trial court. 14 days.*
- *Recommendation 4: Amend the court rules to shorten 42-day deadline for filing transcripts under MCR 7.210(B)(3)(b)(iii). 7 days (estimated).*
- *Recommendation 5: Expand Court of Appeals Contract Attorney Program for TPR Reports. 21 days.*
- **New Non Time-Specific Proposals for Reducing Delay in Dependency Appeals** Although the time savings cannot be reliably quantified currently, the following recommendations will, if adopted, save additional time in processing dependency appeals.
  - *Recommendation 6: Establish liaison relationships between the Clerk's Office of the Court in each district and the trial courts in that district.*
    - *Assign the trial court role to a trial court staff person with authority and accountability.*

- *Focus on speedy appointments of original and substitute counsel and facilitation of transcript production by court reporters within deadlines.*
- *Recommendation 7: Consider having a SCAO staff person permanently assigned to the task of ensuring that trial court registers of action conform to the 1999 Michigan Trial Court Case File Management Standards.*
- *Recommendation 8: Establish a Permanent Trial Court/Court of Appeals Work Group for Wayne County.*
- *Recommendation 9: Develop A Means of Tracking Poorly Performing Appointed Attorneys.*
- *Recommendation 10: Assign TPR Case Oversight Responsibilities to Court Administrators in Clerk's Office and Research Division.*
- *Recommendation 11. Track the results of a Court experiment in the Detroit clerk's office in which clerk's staff monitor TPR appeals and recommend issuance of court reporter orders to show cause if transcripts are not timely filed.*
- **Conclusions**
  - The quantifiable, time-specific recommendations contained in this report relating to the period following the filing of the claim of appeal will reduce the average time on appeal by 21 days, a 6.3% reduction.
  - The aggregate reduction relating to the period following the filing of the claim of appeal will be 40 days, an aggregate reduction of 12%.
  - The additional time-specific recommendation to reduce time between entry of the trial court order terminating parental rights and filing of the claim of appeal will cut up to 42 more days from the overall time between termination of rights and disposition of the appeal. The overall reduction will be 82 days.
  - The additional non-quantifiable and non-time-specific recommendations contained in this report will further reduce the time spent processing dependency appeals.

## II. INTRODUCTION

**A. Statement of the Problem** In September 2002, the Michigan Supreme Court directed the Court of Appeals to review the process by which it receives and resolves dependency appeals. A review of the statistics relating to the time that it takes the Court of Appeals to decide such dependency appeals triggered this concern. Although these are expedited appeals, on average in 2001 the Court disposed of these appeals within 325 days of filing. On average in 2002, this time was 321 days. In the first quarter of 2003, this time was 279 days. Although this represents considerable progress, the overall average time to disposition is still not acceptable and the Court of Appeals, along with personnel from the Supreme Court and representatives of “stakeholder” groups, has devised a plan of action to deal with this problem. The Court’s dependency appeals Work Group has completed its review and this report reflects the preliminary findings and recommendations that it proposed in November 2002 to use as a guide to a more comprehensive review of the subject, together with annotations reflecting subsequent Work Group action. Statistics reflecting time on appeal for dependency cases disposed by opinion at the Court of Appeals have also be updated throughout the report to reflect the entirety of 2002 and the first quarter of 2003.

**B. NCSC/SJI Report** A new report from the National Center for State Courts and the State Justice Institute titled *Expediting Dependency Appeals: Strategies to Reduce Delay* (2002) guided this review of dependency appeals. Appendix A (at pp 20-24 of this report) contains a summary of the NCSC/SJI report, supplemented with comments on how the various recommendations for change are reflected in (or are recommended for future implementation in) internal Court procedures and case management policies.

## III. BREAKING DOWN THE PROCESS FOR DEPENDENCY APPEALS

**A. Overview** The Court of Appeals handles two primary types of dependency appeals: appeals arising from orders or opinions involving custody of minor children in domestic relations cases and appeals arising from orders terminating parental rights due to neglect or abuse.

The first type of appeal (flagged CUS in the Court’s case management system) is generally prosecuted to disposition by retained counsel who are quite capable of conforming their practice to the expedited timeline that is provided in the applicable court rules.

The second type of appeal (flagged TPR in the Court’s case management system) presents a significantly greater problem for all participants. The parents are generally indigent individuals who are represented by appointed counsel. These attorneys often find it difficult to give as much attention to each appeal as they would like. Further, the records in TPR appeals will often be larger than in CUS appeals because of the required periodic review hearings that precede the final order terminating parental rights. Depending on the size and resources of the lower court, larger records can cause difficult record production problems for court reporters.

This report therefore focuses on TPR cases because those cases present more difficult problems than are associated with CUS appeals. Recommendations as to TPR appeals are applicable to CUS appeals unless stated otherwise in this report.

**B. Stages of Appeal** This report discusses case management of dependency appeals in terms of four primary case stages for appeals following the filing of the claim of appeal that the Court resolves by opinion rather than by order.

**Major Stages in Case Processing**  
Average Days Within Each Stage

	All Appeals Disposed by Opinion in 2001	%	TPR & CUS Appeals Disposed by Opinion In 2001	%	TPR & CUS Appeals Disposed by Opinion In 2002	%	TPR & CUS Appeals Disposed by Opinion In Jan-Mar 2003	%
<b>Intake</b>	260	40%	187	60%	178	55%	171	61%
<b>Warehouse</b>	271	41%	56	12%	56	17%	25	9%
<b>Research</b>	61	9%	52	20%	67	21%	70	25%
<b>Judicial Chambers</b>	61	10%	30	9%	20	6%	13	5%
<b>Total Average Days</b>	653		325		321		279	

The reader should note that the statistics reported above for appeals disposed by opinion in 2001 have been refined somewhat from earlier published statistics through the application of a newly designed computer program that significantly increased the accuracy and availability of these data. While the variance was not significant (the total average for 2001 was earlier reported at 654 days rather than 653), the accuracy of the data is valuable.

The four primary case stages on appeal are Intake, Warehouse, Research, and Judicial Chambers:

1. *Intake*. During *Intake*, initial papers are filed with the Clerk's Office, a court file is opened and a docket number assigned; a staff attorney reviews the filing for conformance with the court rules and jurisdictional requirements; the file is forwarded to the district clerk's office; a transcript order is filed; a stenographer's certificate is filed; a court reporter's notice of filing transcript is filed; the appellant's brief is filed; the appellee's brief is filed (or the time for doing so has lapsed); the trial court transmits the record upon request; and the appeal is noticed for submission to a panel of Judges of the Court. In 2001, the average period in the *Intake* phase was 263 days for *all* types of appeals disposed by opinion at the Court. In 2001 for *TPR appeals*, the average time period in the *Intake* phase was 194 days for those appeals disposed by opinion. In 2002, this time was 178 days. In the first quarter of 2003, this time was 171 days.
2. *Warehouse*. When briefing has been concluded and the lower court record has been filed with the Court, the appeal is ready to be forwarded to the central staff of research attorneys for preparation of a research report to the Judges. This stage is titled the *Warehouse*. It extends from the date the case is ready for research, through the date it is sent to research, until the date it is actually assigned. Other than preliminary screening to assist in assigning the appeal to a research attorney, nothing substantive happens to the appeal when it sits in the *Warehouse*. In 2001, the average wait in the *Warehouse* was 271 days for *all* types of appeals disposed by opinion at

the Court. In 2001 for *TPR appeals*, the average wait in the Warehouse was 56 days for those appeals disposed by opinion. In 2002, this time was also 56 days. In the first quarter of 2003, this time was 25 days.

3. *Research*. When appeals are sent to *Research*, those with priority status (such as TPR or CUS appeals) are assigned first to attorneys; all others are assigned on a first-in, first-out basis. After preparation of a research report, the supervisor determines whether the case is appropriate for placement on a summary panel (i.e., it is routine in nature and does not require oral argument) or should be placed on a regular case call. In the latter situation, the case is assigned a degree of difficulty evaluation which represents the complexity of the appeal and which is later used to balance the workload among the three Judges on the regular case call panel. In 2001, the average time at the *Research* stage was 61 days for *all* types of appeals disposed by opinion at the Court. In 2001 for *TPR appeals*, the average time in *Research* was 52 days for those appeals disposed by opinion. In 2002, this time was 67 days. In the first quarter of 2003, this time was 70 days.
4. *Judicial Chambers*. When appeals have been reported on by *Research* or have been screened as eligible for submission to the Judges without a report, they will be scheduled for submission on case call, to either a summary panel or a regular panel. After transmission of the briefs, records, and research reports to the *Judicial Chambers*, a regular case call panel will listen to oral argument for two or three days each month. Oral argument is generally heard in all appeals in which the parties have met the requirements of the court rules or as ordered by the Court. Following argument, the panels conference on site and discuss the disposition of the appeals. Cases placed on a summary panel will not be granted oral argument unless the panel specifically directs the Clerk's Office to schedule oral arguments. Arguments are scheduled not less than 21 days after the original submission date of the cases. Subsequently, each Judicial Chambers will work to draft, circulate, and file opinions in outstanding appeals. In 2001, the average time in the *Judicial Chambers* was 61 days for *all* types of appeals disposed by opinion at the Court. In 2001 for *TPR appeals*, the average time in the *Judicial Chambers* was 30 days for those appeals disposed by opinion. In 2002, this time was 20 days. In the first quarter of 2003, this time was 13 days.

**C. Current Timelines for TPR Appeals** The Court's handling of TPR appeals depends in large part on the timelines that the Michigan Court Rules establish. To analyze the time at each stage as outlined above, it is necessary to understand how the court rules impact each step of such an appeal.

1. *Filing the Appeal* The timeline established by court rule currently allows about 70 days to file an appeal after the trial court enters an order terminating parental rights. In the context of the four stages introduced above (*Intake*, *Warehouse*, *Research* and *Judicial Chambers*), this period precedes *Intake*. It starts running upon entry of the order terminating parental rights and ends when the claim of appeal is filed. The 70 days now allotted for this period are comprised of the following increments:
  - **21 days** – Deadline for indigent parent to request appointment of counsel. MCR 7.204(A)(1).

- **28 days** – Estimated average time for trial court to appoint counsel. There is no deadline by court rule.
  - **21 days** – Deadline for counsel to file claim of appeal after entry of order appointing counsel. MCR 7.204(A)(1).
2. *Intake.* The timeline established by court rule currently allows about 112 days to compile the briefs and record. The 112 days are comprised of the following increments:
- **42 days** – Deadline for filing transcripts, counted from the date transcripts are ordered by the trial court or by counsel. If ordered by the trial court, this is often contemporaneous with the appointment of counsel. MCR 7.210(B)(3)(b)(iii). In any event, the rules direct that transcripts are to be ordered “within the time for taking the appeal.” MCR 7.204(E)(4).
  - **28 days** – Deadline for filing appellant’s brief, counted from the filing date of the last timely filed transcript. MCR 7.212(A)(1)(a)(i).
  - **21 days** – Deadline for filing appellees’ briefs, counted from the date of service of appellant’s brief, as stated in the proof of service. MCR 7.212(A)(2)(a)(i).
  - **21 days** – Deadline for transferring record (transcripts and lower court file) to Court of Appeals by lower court. MCR 7.210(G).
3. *Warehouse.* Although TPR appeals are expedited throughout the case process by court rule and internal policy, the lack of sufficient staff attorneys at the Court delays assignment and reporting in Research.
- **7 days** – estimated time to send case to Research for preparation for case call. MCR 7.213(C) and 7.202(6).
  - **21 days** – estimated time to assign case to staff attorney for preparation for case call.
4. *Research.* In the first quarter of 2003, it took 70 days to prepare a research report and schedule an appeal for submission to a case call panel.
- **70 days** – Estimated time to prepare research report and schedule case for submission to a regular panel or to a summary case call without oral argument. MCR 7.214(E). For part of this time, the reports have been completed and are simply awaiting placement on the next month’s case call. The placement of cases on a regular or summary panel is done not less than 21 days before the actual submission date of the case call to give the parties sufficient notice of the cases’ placement on call in accordance with MCR 7.213(D). Depending on when the research report of a particular case is completed during the monthly cycle of placing cases on the next month’s case call, the period of time from completion of the research report to the submission on case call may range from 21 days to 42 or more days.
5. *Judicial Chambers.* For appeals disposed by opinion in the first quarter of 2003, it took 13 days to move an appeal through the *Judicial Chambers*.



- **13 days** – Actual time to move TPR and CUS appeals through the *Judicial Chambers* for appeals disposed by opinion from January through June 2002.

5. **D. Summary.** In a TPR appeal in which there are no delays, it should currently take about 293 days to process such an appeal from the date of an order terminating parental rights to the issuance of an opinion. Omitting the time before the filing of the claim of appeal, in a TPR appeal in which there are no delays, it should currently take the Court about 223 days to process such an appeal from the filing of the claim of appeal until issuance of an opinion. As stated above, however, in 2001 the *average* time to dispose of such a TPR appeal by opinion from the filing of the claim of appeal was 325 days. In 2002, this time was 321 days. In the first quarter of 2003, this time was 279 days.

The following chart compares these time frames:

	Time Permitted by Court Rule & Court Policy	%	TPR & CUS Appeals Disposed by Opinion In 2001	%	TPR & CUS Appeals Disposed by Opinion In 2002	%	TPR & CUS Appeals Disposed by Opinion In Jan-Mar 2003	%
<b>Filing of Claim</b>	[70]		No Data		No Data		No Data	
<b>Intake</b>	112	50%	194	60%	178	55%	171	61%
<b>Warehouse</b>	28	13%	38	12%	56	17%	25	9%
<b>Research</b>	63	28%	64	20%	67	21%	70	25%
<b>Judicial Chambers</b>	20	9%	29	9%	20	6%	13	5%
<b>Total Average Days on Appeal</b>	223		325		321		279	

#### IV. EXPEDITING DEPENDENCY APPEALS

##### A. Case Differentiation

1. *National Standard to Differentiate Dependency Appeals.* One precept that runs through the entirety of the NCSC/SJI report is that good case management in this area requires the differentiation of dependency appeals from other appeals. The interests at stake are clear. As the NCSC/SJI report quotes from Justice Evelyn Lundberg Stratton, Supreme Court of Ohio, *Expediting the Adoption Process at the Appellate Level*, 28 Cap. L.R. 121, 121 (1999):

“Cases involving termination of parental rights and adoption issues are about the lives of children, rather than contracts, insurance, business disputes, or water rights. The legal system views these cases as numbers on a docket. However, to a child, waiting for a resolution seems like forever – an eternity with no real family and no sense of

belonging.” *Expediting Dependency Appeals: Strategies to Reduce Delay* (2002) (p 1).

2. *Past Experience.* As reflected in the Court’s comments to the NCSC/SJI report in Appendix A (at pp 20-24 of this report), the Court has a long history of expediting dependency appeals. The court rules reflect a historical expectation that TPR and CUS appeals will be given priority handling at each stage. Appeals dating back as far as at least 20 years bear the TPR and CUS flags that are added to such appeals at the moment the incoming filing is recognized to involve such issues. For at least as long, automated case management lists have been programmed to recognize and prioritize appeals that bear the TPR or CUS flag at each stage of processing. Further, the Court’s overall delay reduction plan contains another step toward case differentiation; within the Judicial Chambers, the Court now divides its appeals into four categories – custody/TPR appeals, other expedited appeals, summary panel appeals, and regular/complex panel appeals – and sets varying time standards for deciding these appeals, with custody/TPR appeals receiving the highest priority. However, it is clear that further time gains can and should be made in a number of areas. The remainder of this report will analyze how that can be accomplished.

**B. The Court’s Current Delay Reduction Plan.** On March 8, 2002, the Judges of the Court adopted an overall long-range delay reduction goal and a number of shorter-term objectives designed to meet that goal. The long-range goal was to dispose of 95% of all its appeals within 18 months of filing, commencing October 1, 2003. The Court’s delay reduction plan is a comprehensive effort that involves the collection of statistics on virtually every stage of appeals that the Court disposes of by opinion. The many incremental objectives contained in the delay reduction plan cover more than dependency appeals. However, the following proposals from that plan would have the effect of further expediting dependency appeals.

- Reduce delay at *Intake* by shortening the time for transferring the lower court record from 21 days to 14 days.

*Projected Time Reduction: 7 days*

- Reduce delay between *Research* and *Judicial Chambers* by precluding adjournment from summary (no oral argument) call of appeals that require argument. If argument is required due to the complexity of the appeal or the nature of the issues raised, argument will be scheduled before the same panel during the next month, since adjournment to another panel can result in months of delay. Scheduling the appeal before the same panel in the next month will restrict delay to just a few weeks in the few appeals that the Judges conclude will be facilitated by oral argument. Because a substantial number of TPR appeals are submitted to summary panels, this recommendation will directly impact TPR appeals. However, historically very few TPR appeals were adjourned from summary panels for placement on subsequent regular panels with oral argument. For that reason, the time savings that this change will have on the average disposition time of *all* TPR appeals will be only 4 days.

*Projected Time Reduction: 4 days*

## The Court's Delay Reduction Plan

	Days Within Stage	Cumulative Days
Intake	7	7
Warehouse		
Research	4	11

**C. New Time-Specific Proposals For Reducing Delay In Dependency Appeals.** Because the court rules presently provide relatively lengthy periods of time in which to accomplish routine procedures, the dependency appeals Work Group recommends that the rules be substantially amended to eliminate causes of delay that add nothing to the overall appeal process. Recommendations 1, 2, and 3 will not impact the time on appeal after filing of the claim of appeal, but they will shorten the overall time from order of termination to final disposition. In so doing, the judicial system will significantly reduce the child's sense of waiting "an eternity with no real family and no sense of belonging." *Expediting Dependency Appeals: Strategies to Reduce Delay* (2002) (p 1).

1. *Recommendation 1: Shorten the time in which the respondent parent can request counsel so that the request must be made within 14 days of entry of the order terminating parental rights, a 7-day shorter period than is now provided in MCR 7.204(A)(1).*

*Projected Time Reduction: 7 days*

*NOTE: This recommendation has been adopted by the Work Group. A proposed rule amendment will be submitted to the Michigan Supreme Court. See Appendix E.*

2. *Recommendation 2: Amend the court rules to establish an automatic claim of appeal such as is employed in criminal appeals under MCR 6.425(F)(3). Provide a new court form that would function as the order appointing counsel, the order for transcripts and as the claim of appeal. See Appendix B (at p 23 of this report) for the form that is currently used in criminal appeals. Use of the form by the trial court would eliminate the 21-day period that now runs between the appointment of counsel and counsel's filing of a claim of appeal under MCR 7.204(A)(1). As this proposal is further developed, the Work Group will focus on designing the process to avoid the chance that parents will request counsel before having affirmatively decided to appeal.*

*Projected Time Reduction: 21 days*

*NOTE: This recommendation has been adopted by the Work Group. A proposed rule amendment and form were approved in June 2003. See Appendix E.*

3. *Recommendation 3: Set deadline for issuance of the claim of appeal / order appointing counsel / transcript order by the trial court. The court rules require that the trial court rule on a criminal defendant's request for counsel within 14 days after receiving it. MCR 6.425(F)(1)(a). If the automatic claim of appeal / order appointing*

counsel / transcript order concept is adopted in TPR appeals, the time in which the trial court must rule on the parent's request for counsel should be no more than 14 days by court rule. Because there is presently no deadline, the time savings is an extrapolation from the earlier estimate that trial courts average 28 days in appointing counsel to represent indigent parents in TPR appeals.

*Projected Time Reduction: 14 days*

*NOTE: This recommendation has been adopted by the Work Group, with the proviso that the chief judge of the trial court should bear primary responsibility for ensuring that the timeline is met. A proposed rule amendment will be submitted to the Michigan Supreme Court. See Appendix E.*

4. *Recommendation 4: Amend the court rules to shorten 42-day deadline for filing transcripts under MCR 7.210(B)(3)(b)(iii).* The Work Group will further consider this question with direct stakeholders from the trial courts and court reporter/recorder groups before determining whether a shorter time is feasible and, if so, what that shorter period should be. At present, the proposal is to reduce the time period by no more than 7 days, leaving a deadline of 35 days in which to transcribe the entire record. Given existing resources, however, even that small reduction may prove difficult to impose.

*Projected Time Reduction: 7 days (estimated)*

*NOTE: The Work Group will not take action on this recommendation at the present time. The current 42-day deadline is difficult for court reporters to meet given staffing and budgetary issues that face Michigan courts in 2003 and for the foreseeable future. An experiment in the Detroit office of the Clerk of the Court of Appeals is focused on securing compliance with the present deadline. While that experiment has been successful thus far, the Work Group will delay action on reducing production time overall for the present.*

5. *Recommendation 5: Expand Court of Appeals Contract Attorney Program for TPR Reports.* The Court uses contract attorneys to prepare reports in routine TPR appeals. An increase in the number of TPR filings requires an increase in the number of contract attorneys to enable the Court to prepare these appeals for submission as quickly as they are available.
  - Between 1996 and 1999, the number of TPR appeals filed each year increased from 354 to 616. This unexpected increase delayed the disposition of such appeals and severely strained the ability of the Court's staff attorneys to meet their case call obligations in other, non-priority appeals. The Court initiated a contract attorney program in September 2000 to combat the delay. These attorneys are former Court employees who now work as independent contractors assigned to report on routine TPR appeals. See Appendix C (at pp 24-25 of this report) for a summary of the contract attorney program.
  - Although the number of TPR appeals dipped slightly in 2000 and 2001 (508 and 528, respectively), the number of filings has increased this year and the Court

anticipates that about 600 TPR appeals will be filed in calendar 2002. Historical screening data maintained by the Research Division indicates that 75% of the TPR appeals can be classified as “routine” appeals.

- “Routine” TPR appeals are assigned to contract attorneys for preparation of research reports. Fourteen contract attorneys presently work in the program. The contract attorneys are paid a flat rate determined by the day evaluations of the appeals, with the “per hour” rate based on what a first year research attorney is paid.
- Extrapolated for the full twelve months of 2002, the contract attorneys will prepare reports and proposed opinions in approximately 175 TPR appeals. To prepare an equivalent number of reports and opinions with staff attorneys, the Court would have to hire 2.6 additional Senior Research attorneys at a cost of approximately \$145,000 more than the contract attorney program.
- Given the number of routine TPR appeals filed each year, the Court would require the services of another six to eight contract attorneys to process *all* routine TPR appeals as quickly as they are ready for research, thus eliminating the 21-day assignment delay that now occurs due to insufficient numbers of attorneys to whom these appeals can be assigned. The estimated cost of expansion of the contract attorney program is \$35,000 to \$50,000.

*Projected Time Reduction: 21 days*

*NOTE: The efficacy of the program is not questioned. The Court of Appeals will pursue expansion of the program as the caseload requires and resources allow. The outcome of the FY04 budget process will determine the availability of additional funding. If an appropriation is not received for this purpose, and the caseload would support an expansion of the program, grant funding may be investigated. In the interim, internal deadlines for staff reports will be carefully monitored.*

6. Aggregate Time Reductions from Delay Reduction Plan and Proposed Rule Amendments. If each of the foregoing approved proposals is applied to the timeline (Recommendation 4 would be excluded for the present), the Work Group projects an aggregate time reduction of 74 days from the entry of the order terminating parental rights until issuance of the opinion. Forty-two days would be saved from the time of the entry of the order terminating parental rights to the filing of the claim of appeal; 32 days would be saved from the time of the filing of the claim of appeal to the issuance of an opinion. The 279 days (from filing) that it took to resolve TPR and CUS appeals disposed by opinion from January through March 2003 would be reduced to 247 days (8.23 months).

## Aggregate Time Reduction Proposals for Further Delay Reduction

*NOTE: Because the Work Group has delayed action on the recommendation to reduce the time for filing transcripts, seven fewer days will be saved than were projected. The following chart has been modified to reflect this.*

	Days Saved	Cumulative Days Saved from Order Terminating Parental Rights	Cumulative Days Saved from Filing of Claim of Appeal
Reduction 1	7	7	0
Reduction 2	21	28	0
Reduction 3	14	42	0
<del>Reduction 4</del>	<del>7</del>	<del>49</del>	<del>7</del>
Reduction 5	21	63	21
Current Delay Reduction Plan	11	74	32

**D. New Non Time-Specific Proposals For Reducing Delay in Dependency Appeals.** The dependency appeals Work Group's review of the Court's anecdotal experience with TPR appeals revealed a number of situations in which potentially lengthy, but nonspecific, delays can occur. These delays are due to the very nature of TPR appeals and their impact on every level of the judicial system. The following proposals focus on case management issues that arise outside the structure of court rules and internal Court policy. Stakeholder appreciation for the validity of these issues and commitment to a collaborative response will be critical to any success that can be achieved in these areas. The dependency appeals Work Group cannot project a reduction in days at this time.

1. *Recommendation 6: Establish liaison relationships between the Clerk's Office of the Court in each district and the trial courts in that district.*
  - Assign the trial court role to a trial court staff person with authority and accountability.
  - Focus on speedy appointments of original and substitute counsel where the original attorney fails to perform, and facilitation of transcript production by court reporters within deadlines.

*NOTE: The formation of liaison relationships between the district offices of the Court of Appeals and each trial court is acknowledged to be an important means of facilitating action in individual cases that have gotten off track. Joint letters from Chief Justice Maura D. Corrigan and Chief Judge William C. Whitbeck will*

*be sent to other juvenile courts to encourage the designation of trial court staff who can be contacted by Court of Appeals staff when cases or local procedures require special attention.*

2. *Recommendation 7: Assign a SCAO staff person permanently to ensure that trial court registers of action conform to the 1999 Michigan Trial Court Case File Management Standards. MCR 9.119(D)(1)(c) requires the trial courts to maintain registers of action that contain chronological notations of the “date of each event and type and result of action.” Accurate records would facilitate speedy transcript production of hearings that are actually pertinent to the appeal.*

*NOTE: The Work Group approved the following modified recommendation.*

*AMENDED Recommendation 7: Implement a procedure under which the Court of Appeals will refer to SCAO those trial courts whose registers of action fail to substantially conform to the 1999 Michigan Trial Court Case File Management Standards. MCR 9.119(D)(1)(c) was promulgated under these standards to require the trial courts to maintain registers of action that contain chronological notations of the “date of each event and type and result of action.” Accurate records in this regard should facilitate speedy production of transcripts of hearings that are actually pertinent to the appeal. The Court of Appeals shall refer to SCAO those family divisions of the circuit courts whose ROAs fail to substantially conform to this requirement so that SCAO can work with the family divisions of the circuit courts to achieve closer conformity with the standards.*

3. *Recommendation 8: Establish a Permanent Trial Court/Court of Appeals Work Group for Wayne County. The Family Independence Agency estimates that close to 50% of all TPR appeals arise from orders entered in Wayne County.*

- Court experience indicates that most of the TPR appeals that cause substantial delay arise from orders entered in Wayne County.
- A permanent Wayne County/Court of Appeals task force should be formed that would establish a cooperative and collaborative working relationship on TPR appeals. The task force should devote attention to attorney appointments and transcript production. The task force should encourage and facilitate experimental programs, with the expectation that successful programs can later be expanded throughout the state.

*NOTE: In February 2003, the Detroit Clerk’s Office of the Court of Appeals formed a Wayne County Work Group composed of a judge and top local administrator from the Court of Appeals, and the presiding judge and designated administrators and staff from Wayne Circuit Court – Family Division. This group’s report was delivered to the Dependency Appeals Work Group at its April 2003 meeting. The Wayne County Work Group focused on the policies and procedures that govern the appointment of counsel, the ordering and production of transcripts, the replacement of counsel when an attorney fails to pursue an appeal under the court rules, and the production of the trial court record when requested by the Court of Appeals. A copy of the Group’s report is attached as Appendix D.*



4. *Recommendation 9: Develop A Means of Tracking Poorly Performing Appointed Attorneys.*

- The dependency appeals Work Group will investigate means of tracking and reporting poorly performing appointed attorneys to oversight groups. Eliminating such attorneys from the list of individuals who are available for appointment will reduce the number of appeals that far exceed the allowable time for processing TPR appeals.

*NOTE: The District Offices of the Court of Appeals will alert the Chief Judge when attorneys in dependency cases have incurred three involuntary remands for the appointment of substitute counsel in six months. The Chief Judge will send a letter to the appointing trial court, alerting that court to the attorney's performance and its impact on the short timeline for these appeals.*

5. *Recommendation 10: Assign TPR Case Oversight Responsibilities to Court Administrators in Clerk's Office and Research Division.*

- Coincident with the dependency appeals Work Group's initial study of the handling of TPR appeals, the Court's Information Systems Department created a new case management report reflecting the number and age of each TPR case at each incremental stage of processing.
- The new report is now available on MAPPIS, the Court's computerized case management system. For appeals with the specified flags (TPR, CUS, etc.) a dynamic report can be elicited from MAPPIS through which users can "drill down" to the case dockets for each case in each age/stage of handling. Appeals that are "off track" are immediately accessible for review and rehabilitation. The report tracks appeals by district so that district administrators are facilitated in reviewing only those appeals within their control. The report also tracks appeals globally so that the Chief Clerk and the Research Director can review the situation on a court-wide basis.
- The Chief Clerk and the Research Director will be responsible for establishing benchmarks and ensuring that their district office managers report on appeals that are delayed beyond acceptable limits at each stage.

*NOTE: The Chief Clerk and Research Director of the Court of Appeals are actively monitoring all TPR appeals through the use of the report referenced above. TPR appeals are actively monitored at the Supreme Court through reports that are provided to the Chief Commissioner on a weekly basis. The Chief Justice and Chief Judge will receive weekly reports on each TPR case pending before their separate courts.*

6. *Recommendation 11. Track the results of an experiment in the Court's Detroit clerk's office in which clerk's staff monitor TPR appeals and recommend issuance of court reporter orders to show cause if transcripts are not timely filed.*



- Customarily, the Court has used MCR 7.217(C) to prod attorneys to monitor whether the court reporter(s) have timely filed the transcripts. Seven to fourteen days after the transcripts are due, the attorney is sent a 21-day warning letter if the transcripts were not filed. Three responses are possible: the transcript is filed within the 21 days, the attorney files a motion to show cause the court reporter within the 21 days, or the attorney does not respond.
- Failure to secure the filing of the transcripts or move to show cause the court reporter within the 21-day period results in submission of the matter to the designated judge [MCR 7.211(E)(2)] for issuance of an order remanding the matter to the trial court for appointment of substitute counsel. Submission can take 7 to 14 days and, if a remand occurs, especially in the larger counties, another 4 months can pass before the attorney is appointed and the transcripts are filed. This route can add 6 months to the time on appeal.
- If the attorney responds to the warning letter with a motion for order to show cause the court reporter, less time is consumed but the appeal is still delayed. Submission of the motion and generation of the order to show cause can take up to 14 days. The show cause hearing is set for a date that is 3 to 4 weeks in the future, with the transcripts due about a week before the hearing date to allow for docketing. This route can add 70-77 days to the time on appeal, and the transcripts might still be outstanding if the court reporter does not comply with the show cause order.
- Thus, the traditional method consumes either 70-77 days between the initial transcript deadline and the ultimate transcript filing after an attorney-requested show cause order, OR about 6 months if the attorney fails to respond and the matter is remanded for appointment of substitute counsel.
- The experiment will shortcut a significant portion of this time. Within 7 to 14 days of the unmet filing deadline, the clerk's office will forward a proposed order to show cause to the designated (on-site) judge for signature. The orders will be signed that day and docketed and mailed the next. The show cause date will be set about 4 weeks in advance, with the transcripts due a week before that to allow for docketing. In the aggregate, this method should consume only about 42 days, cutting about 35 days off the shortest time under the traditional process, and about 4-1/2 months off the longest route.
- The experiment was implemented in the Detroit office in October 2002. Anecdotal results are positive; statistical studies will be done after six months to evaluate the benefits of the plan and its suitability for other districts and (perhaps) for other contexts.

*NOTE: The progress-to-date of the Detroit Clerk's Office experiment was reported at the Work Group's April 2003 meeting. The project is quite successful and will be continued. Due to the unique circumstances in Wayne Circuit, however, the project will not be expanded to other circuits at present.*

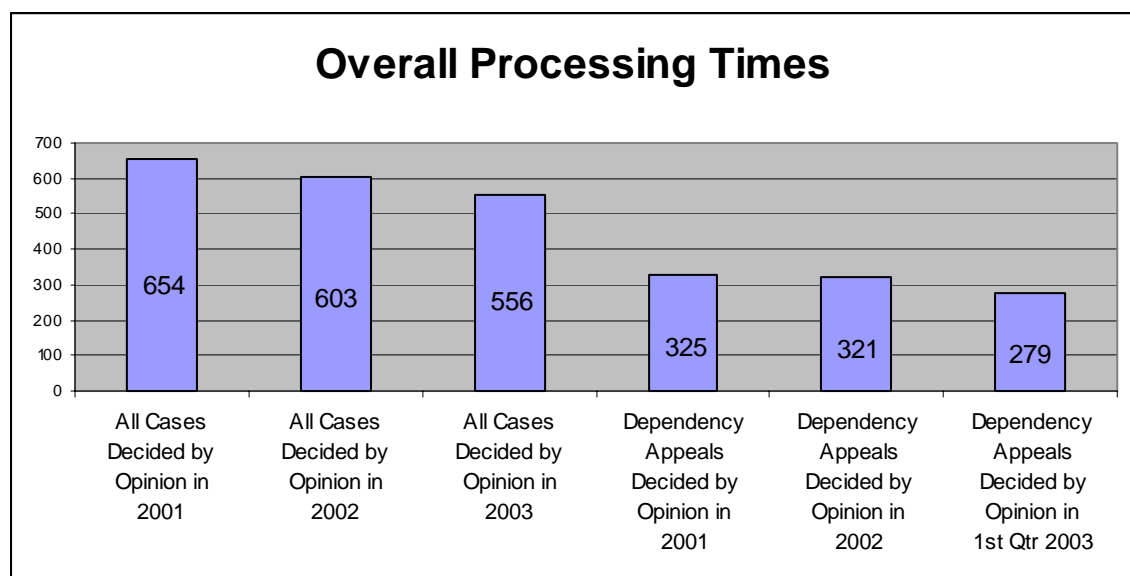
**E. New Initiative in 2003.** MCR 7.202(6) defines a “custody” case as “a domestic relations case in which the custody of a minor child is an issue, an adoption case, or a case in which the juvenile division of probate court has entered an order terminating parental rights or an order of disposition removing a child from the child's home.” Historically, motions to extend time to file briefs on appeal in “custody” cases at the Court of Appeals have been routinely granted for a full 28 days under MCR 7.212(A)(1)(a)(i). At its April 2003 meeting, the Work Group concluded that motions to extend time to file briefs on appeal in these cases should be scrutinized for good cause and only granted for the specific time required. A May 1, 2003, press release announced this change in policy, with an effective date of May 12, 2003. It is not possible at present to estimate how much time can be saved under this change, since each case will be reviewed on an individual basis.

**F. Proposals for Future Review by Work Group.** The Court of Appeals entertains a class of appeals from orders terminating parental rights in which appointed counsel failed to file the claim of appeal within the 21-day deadline provided in the court rule. Upon receipt of such untimely claims of appeal, the Court customarily treats the late claims as applications for leave to appeal, grants them, and assesses costs against the appointed attorney. In this manner, the respondent’s appeal proceeds and the non-performing appointed attorney is assessed costs as a disincentive. Court data for recent years indicates that approximately 50 such appeals are received annually. The Work Group determined at its April 2003 meeting that it will review these cases again in one year to determine whether to take action to eliminate them altogether.

## V. CONCLUSIONS

As indicated above, the Court’s Dependency Appeals Work Group has completed its preliminary review of the process by which the Court receives and resolves dependency appeals. This report reflects the preliminary findings and recommendations of the Work Group, together with annotations reflecting subsequent actions of that Group.

Overall, the comparative processing times at the Court of Appeals are graphically portrayed as follows:

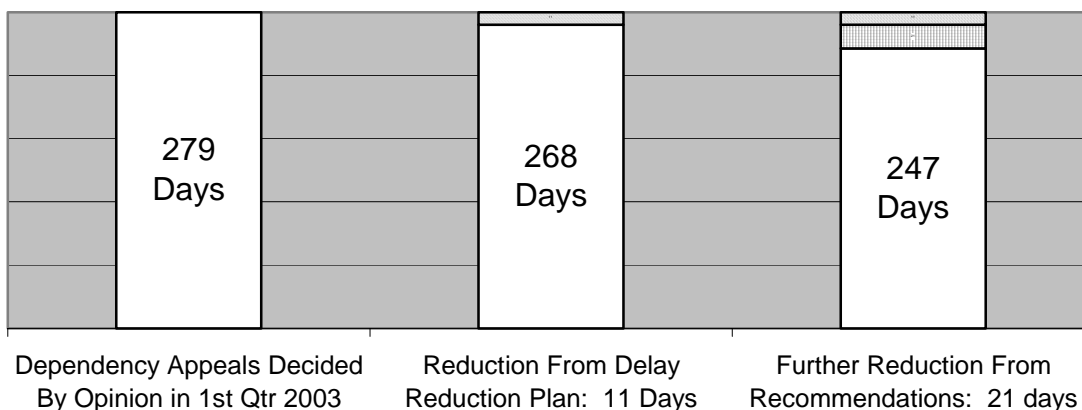


To assist in further reducing time of appeal for dependency cases, this report contains recommendations for court rule and policy changes. It documents ongoing initiatives in case processing methods and refers to case management tools that are used at the Court to track and prioritize these appeals. Finally, it discusses ideas that are under consideration to foster cooperation and collaboration between the appeals court and the many trial courts that precede the Court in reviewing dependency cases.

If each of the approved proposals is applied to the timeline (Recommendation 4 would be excluded for the present), the Work Group projects an aggregate time reduction of 74 days from the entry of the order terminating parental rights until issuance of the opinion. Forty-two days would be saved from the time of the entry of the order terminating parental rights to the filing of the claim of appeal; 32 days would be saved from the time of the filing of the claim of appeal to the issuance of an opinion. The 279 days (from filing) that it took to resolve TPR and CUS appeals disposed by opinion from January through March 2003 would be reduced by 32 days to 247 days (8.23 months).

These reductions, as compared to the current situation, are graphically portrayed as follows:

### Reduction in Time to Process Dependency Appeals Following Filing Of The Claim Of Appeal



The pre-*Intake* recommendations to cut 42 days from the time that the court rules now provide between entry of the order terminating parental rights and filing of the claim of appeal will shorten the overall process. The overall reduction therefore will be 74 days. The additional proposals focusing on the intangible but extremely important working relationship between the trial and appellate courts will further reduce the time spent processing dependency appeals. While these proposed reductions are, as yet, only numbers on the Court's docket, their effect will be a considerable, finite, and measurable improvement in the situation of the children who wait for a resolution of the most important element of their lives, their status within a family.

## APPENDIX A

# Expediting Dependency Appeals: Strategies to Reduce Delay

(National Center for State Courts & The State Justice Institute)

Following is an outline of the materials that were forwarded to the COA with Chief Justice Corrigan's invitation to form this Work Group. Comments reflecting the status of various processes, procedures, and initiatives at the COA are included in italics.

### **Assess appellate environment**

- Current process for handling dependency appeals
- Identify and assess roadblocks and causes of delay
- Establish and create an awareness of need for change

### **Appoint a leader**

- Passionate about expediting
- Has authority
- Is accountable
- Is able to convene a task force with all stakeholders

### **Assemble a task force**

- Justice or Appellate Judge
- Trial and Appellate Clerks
- Court administrator
- Trial judge
- Practicing Attorney, Guardian Ad Litem
- Court Reporter/Transcriber

### **Develop a plan**

- Identify sources of delay
- Examine ways to reduce delay
- Consider how to make process uniform throughout state (if IAC has distinct districts – not MI)
- Encourage cooperation from stakeholders
- Improve communication (newsletter, brown bag status meetings, feedback requests)
- Conduct regular meetings
- Assign specific tasks (homework) to keep process moving
- Look at other states
- Develop outcome measures
- Continue to assess and measure

## **Draft a Rule**

- Review or copy rules and statutes in other states
- Contact NCSC for examples and samples of rules and statutes
- Draft a statute or rule to give force of law and permanency to expedited process

***Comment:** The COA functions under a long-standing set of court rules that were summarized in the meeting presentation. Proposed amendments are suggested as to devising an automatic claim of appeal that short cuts the time for appointing counsel, ordering transcripts, filing claim of appeal. An amendment was also proposed to shorten time for filing transcripts.*

## **Implement IOPs**

- Informal rules or guidelines that court uses to process appeals.
- May specifically assign tasks to certain persons – X will contact trial court 30 days after notice of appeal to determine status of transcripts; Y will write screening memo 5 days after notice of appeal.

***Comment:** COA has had IOPs since 1998.*

*Court logistics are not especially amenable to naming individuals to handle specific tasks.*

## **Consider Strategies to Improve**

- Notice of Appeal (NOA).
- Use efficient computerized case management system.
- Coordinate clerks from trial and appellate courts.
- Require party and attorney to sign NOA.
- Indicate on NOA that appeal is dependency matter.
- Order transcript at time NOA filed.
- Transfer record from trial court to app court expeditiously.
- Do not let appellate mediation delay appeal.

***Comment:** An automatic claim of appeal would reduce some of the delay that occurs prior to the initiation of the TPR appeal .*

*The Court's computerized case management system, MAPPIS, is used to track and monitor all cases processed here.*

*The COA would welcome the establishment of cooperative relationships with trial court staff who have the authority to break logjams in appointments of counsel, production of transcripts.*

*At the COA, all TPR cases are marked with the TPR "flag" as the files are opened. The presentation materials illustrate a new MAPPIS report geared specifically to TPR cases. Other types can be tracked in the same way – this would include CUS (custody) appeals.*

*A rule proposal now pending at the MSC requests a shortened time for transferring the lower court record to the COA (from 21 to 14 days).*

*Neither TPR nor CUS cases are routed through the Court's Settlement program.*

## Transcripts and Record

- Require Clerk, not parties, to order transcript
- Use technology to expedite transcript production (real time transcription, video records)
- Assess funding barriers to transcript production
- Devise penalties for attorneys, reporters, transcribers
- Waive transcript on appeal if issue is legal
  - Use summary process
  - Attorneys file agreed statement of facts
  - Order only portions of record that apply to legal issues

***Comment:** The proposed automatic claim of appeal would include the ordering of transcripts by the trial court.*

*The use of technology to expedite transcript production is a good suggestion – how to implement?*

*Attorneys and court reporters are subject to the Court's supervision under MCR 7.217. Failure to ensure the timely filing of required elements of the case can result in remand for appointment of substitute counsel, assessment of costs, appearance at a Court-ordered show cause proceeding before the panel of COA judges who supervise transcript production in each district. Court reporters have been ordered out of their courtrooms until late transcripts have been produced.*

*Additional support in this area from the trial courts would be very useful. A trial court liaison of some type, especially in the larger counties, would assist the Court in moving cases along.*

## Briefing

- Shorten timeline
- Limit extensions
- Monitor attorneys and briefing schedules
- Follow through and enforce timelines
- Same day appeal is briefed, set it for argument and conference

***Comment:** The transcript timeline should be shortened from 42 days. Is 35 days reasonable? What impact would that have on trial court functions?*

*Extensions for transcripts and briefs are limited now for TPR and CUS appeals. Unlike most appeals, briefing in such cases cannot be extended by stipulation. An order of the Court is required. Pending rule amendments under the Delay Reduction project will result in extensions in all cases for limited time and only for good cause shown.*

*The MAPPIS case management system supports monitoring of attorneys' briefing schedules. As above, they are subject to Court supervision through MCR 7.217, under which cases are remanded for appointment of substitute counsel if the current appointed attorney fails to pursue the appeal expeditiously.*

*Once the appeal is briefed and the record is received from the lower court, all TPR and CUS matters are sent directly to the research division for screening and assignment to a research attorney. As soon as the report is prepared, the case is scheduled on case call. Space is made on the case call for such cases; there is no limit to how many such appeals can be scheduled before a case call panel.*

### **Oral Argument & Conferencing**

- Grant OA only if significant legal issues
- Set as soon as appeal is briefed
- Handle dependency appeals first
- Save spaces for expedited cases

***Comment:*** *Presently, OA can be preserved through compliance with applicable court rules. However, TPR appeals are routinely scheduled for submission without oral argument on summary panels, unless significant issues are found during screening.*

*As above, processing through the research division and placement on case call is expedited due to the TPR and CUS flags on these cases. Once the appeal is briefed and the record is received from the lower court, all TPR and CUS matters are sent directly to the research division for screening and assignment to a research attorney.*

*Once the report is prepared, the case is scheduled on the first available case call. There is no limit to how many such appeals can be scheduled before a case call panel.*

### **Decisions**

- Issue decisions from bench
- Vote on case the day it is argued or conferenced
- Draft dependency appeals before all others
- Place time limits on judges' writing
- Assign one specialized editor to edit dependency opinions
- Give dependency appeals a pseudonym

***Comment:*** *Cases on summary panel are customarily voted on and opinions issued within a few days of submission.*

*Internal judges' policies require that priority cases be processed first by judges.*

*The Delay Reduction project includes the standard that 100% of CUS/TPR appeals be decided within 42 days of submission to panel. Current statistics show that the **average** time for completing these appeals is about 20 days from submission. The new standard is for 100% to be decided within 42 days.*

## **Post Decision**

- Mandate on remand or rescript (?).
- Give immediate notice to attorneys and trial court.

**Comment:** COA decisions are communicated to the attorneys and trial court by mail on the day they are released. Opinions are also available the next morning on the COA web site.

## **Other Ideas**

- Assign staff attorney to micromanage appeals on a weekly basis.
- Develop a tracking system.
- Route dependency appeals in a red folder.
- Include photos of child in file – update regularly to demo passage of time.
- Devise penalties for delay – dismiss case, fines, atty removed from appointment list, wage withholding.

**Comment:** *Each district office has an attorney or staff person who is assigned to monitor the case management lists. Dependency appeals are not presently singled out for extraordinary monitoring, although the flag on each such case draws attention and all staff are attuned to the need to move such appeals as quickly as possible.*

*The new MAPPIS report that was included in the presentation materials will support the function of specially tracking such appeals.*

*The TPR and CUS flags on these cases function like a red folder. The COA does not move its case files outside the clerk's office. All Court judges and staff who work on such cases are alerted to their priority status via the case flags.*

*Delay penalties have been summarized above. They include removal from the case via a remand for appointment of substitute counsel, assessment of costs for failure to pursue an appeal in a timely manner, removal of court reporters from their trial court assignments until late transcripts are produced.*

## **Trial Court Expectancies**

- Use one-family/one-judge model.
- Use best practices to avoid appeals.
- Establish timelines for TPR trials.
- Use mediation.
- Judges should not take cases under advisement.
- Judges must fully explain reasoning and findings in cases to avoid appeal.
- Require attorneys to prepare findings and conclusions of law.
- Sign and distribute final order as soon as prepared.
- Alert court clerks to need to expedite the processing of NOA and records.
- Assign specific clerk to prepare appeals.
- Encourage counsel to remain on case through appeal.
- Comply strictly with all time requirements.



### **Review and Refine the Process**

- Fund staff person at appellate level as central contact to enforce rules and IOPs
- Fund staff person at trial court level to track cases preparing for appeal
- Fund specialized court-appointed attorneys at appellate level
- Evaluate process at regular intervals
  - Collect and use stats
  - Analyze outcome measures
  - Measure and refine IOPs
  - Share evals with stakeholders and community
- Train all stakeholders
  - Justices
  - Judges
  - Attys
  - GALs
  - Court administrators
  - Clerks
- Conduct training and encourage communication at national committee meetings
  - CCJ/COSCA
  - NCACC
  - NCSC
  - NACM
  - NASJE
  - GALs Assoc
- Establish mentor/partner relationships with similarly situated states

## **APPENDIX B**

INSERT CIRCUIT COURT FORM CC403

AUTOMATIC CLAIM OF APPEAL

IN CRIMINAL CASES

## APPENDIX C

### Court of Appeals Contract Attorney Program

The contract attorney program is structured as follows:

- The contract attorneys are former staff attorneys who were capable and conscientious employees during their time with the Court. As a condition of participating in the program, the contract attorneys may not be actively engaged in the practice of law.
- The contract attorneys are provided with limited support services. Each contract attorney is responsible for obtaining the necessary computer equipment and software to generate the research reports and proposed opinions. No secretarial support is provided to draft the reports and opinions; such assistance is limited to making final corrections and copying the documents for the case call panels. The Court's Information Systems Department is not responsible for supplying any hardware support or technical assistance except at the discretion of the IS Director. The contract attorneys are issued passwords that will allow them to conduct Internet-based legal research under the Court's accounts with Westlaw and Lexis-Nexis.
- The contract attorneys must sign and abide by confidentiality agreements. A violation of the agreement will result in immediate termination from the program and possible referral for disciplinary action.
- Before being assigned to the contract attorneys, all cases are evaluated by the Court's case screener to determine how many days it should take to prepare the reports and proposed opinions. Contract attorneys prepare reports only in cases deemed to be routine and evaluated at one to four days. Given the priority nature of TPR appeals, the contract attorneys must agree to complete the reports and proposed opinions within two to three calendar weeks of accepting the assignment.
- The contract attorneys are hired on a per-case basis. Their continued participation in the program depends entirely on the Court's needs and their adherence to the production requirements and quality standards.
- Compensation is determined by the day evaluation of the assigned case and an established hourly wage. The hourly rate is set at \$22.01, which is the starting hourly salary for first year Prehearing Attorneys (although all of the participants have at least one year of experience with the Court and most have two to three or more years' experience). Thus, for example, a three-day case is contracted out for \$528.24 (3 days x 8 hours per day x \$22.01 per hour). The contract attorneys are responsible for all withholdings, including state and federal taxes, FICA, etc.

- The contract attorneys receive case assignments from, and are supervised by, a Senior Research Attorney. The reports and proposed opinions prepared by the contract attorneys are proof-read and edited by the supervising attorney before placement on case call to ensure compliance with quality standards. At the supervising attorney's discretion, reports or opinions that fail to satisfy the quality standards will be returned to the contract attorney for further work without additional compensation or, in extreme circumstances, reassigned to a staff attorney. When reassignment is required, the contract attorney's further participation in the pilot program may be discontinued.

## **APPENDIX D**

### **Report of the Wayne Circuit Court – Family Division.**

## THIRD CIRCUIT APPEALS PROCESS

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### JUVENILE

The Court is making the following procedural changes in response to concerns expressed by Court of Appeals Judge Michael J. Talbot and staff regarding the Juvenile appeals process.

#### I. Appellate Counsel Assignment Concerns

##### Appeals Court Statement of Problem

- *Delay in appointing counsel*
- *Delay following expiration of the rehearing period before appointing substitute counsel*

##### Court Action

- A. An Access-based application is being developed (desktop accessible) to capture and track the following data elements:
  1. A database of approved appellate attorneys
  2. Appellate counsel specialties
  3. Attorney assignment history
    - Number of assignments
    - Assignments per Judge
    - Case types and numbers
  4. Actions against appellate counsel
    - Late Filings
    - Warning Letters
    - Order of Remand
    - Show Cause
    - Other (i.e. failure to provide transcript to substitute counsel)
- B. Modification of Assignment Procedures
  1. Judges will rotate appellate assignments monthly.
  2. Judicial staff will enter assignment and case information.
  3. The Judge's alternate will make assignments when the Judge on rotation receives assignment for his/her case.
  4. Judicial staff will contact the attorney to verify availability and willingness to accept prior to forwarding signed order to Administration for processing.
  5. The Chief Judge will bear primary responsibility for ensuring that appointments are timely made.
- C. The Court of Appeals will e-mail the order requesting substitution to the Presiding Judge and the new Appeals Tracking Desk (ATD). The re-appointment will be made within 72 hours. The re-appointment order shall include similar language as follows "...shall produce to substitute counsel, forthwith, any and all transcripts in his/her possession relative to this appeal. If prior counsel fails to do so with seven (7) days of the date of this order he/she shall be assessed the cost of said transcript(s)." Prior counsel shall send

notice to the Presiding Judge/ATD that he/she has provided substitute counsel with all transcripts and other documents. A copy of the re-appointment order shall be mailed or faxed to the Court of Appeals, prior counsel, new counsel and the Appeals Tracking Desk.

**Note:** A manual method of tracking the above-mentioned data elements will be the immediate course of action until the automated program is developed. The estimated date for completion of the automated program is May 1, 2003.

## **II. Transcript Concerns**

### *Appeals Court Statement of Problem*

- *Transcripts not ordered contemporaneously with the appointment of counsel*
- *Transcript order is not issued until after the claim of appeal is filed with the Court of Appeals and copy of the claim is filed with the trial court*
- *Transcript orders not received by the reporters*
- *Reporters failure to timely provide notice if they were not the reporter of record*
- *Reporters fail to file the transcript within 42 days.*
- *Transcript not immediately forwarded to substitute counsel*

### **Court Action**

- A. Court Reporting Services will no longer wait for the claim of appeal to order transcripts. Court Reporting Services shall begin the process from the signed MJC65 - Request/Order for Appellate Transcript and Appointment of Appellate Counsel. (Note: County Clerk Administration shall distribute copies of the signed order to Court Reporting Services and to the Appeals Tracking Desk.)
- B. The Court's Juvenile Information System will be enhanced to capture the 4-digit court recorder/reporter certification number, tape number and tape footage for each hearing. For appeals cases initiated after this system modification date, staff will no longer have to manually search for this information.
- C. The recorder/reporter currently maintains a copy of the transcript on disc. (See I.C)
- D. When prior counsel fails to provide substitute counsel with all transcripts and other documents within the ordered seven (7) the Court shall take action against prior counsel to recover the cost of reproducing the transcripts and other documents

## **III. Appellate Counsel Concerns**

### *Appeals Court Statement of Problem*

- *Failure to file an appellant's brief*
- *Substitute counsel's lack of awareness of appointment as substitute counsel in a pending appeal and that the time for filing the appellant's brief is running from the date of appointment as substitute counsel.*
- *Assigning additional cases to attorneys whose performance on prior or current cases are sub-standard. (See Court Action I.A4)*

### **Court Action**

#### **A. Appeals Tracking System**

An Appeals Tracking Desk is being implemented as follows:

- The ATD shall monitor all appeals cases from the signed MJC65 to the filing of the Claim of Appeal with the Court of Appeals.
- If the ATD has not received a copy of the Claim of Appeals within 23 days of the order appointing counsel, County Clerk Administration shall be notified to generate another MJC65 to reappoint counsel.
- The Court of Appeals will be asked to forward all actions against attorneys to the Presiding Judge and to the Appeals Tracking Desk. This information will be entered into the appellate attorney assignment program.

#### **B. The Juvenile bench shall review the appellate attorney roster quarterly to determine, based on performance, if an attorney will continue to be eligible to receive appellate assignments.**



## **Appendix E**

### **Proposed Rule Amendments**

**MCR 7.204**

**MCR 3.977**

## **Rule 7.204 Filing Appeal of Right; Appearance**

**(A) Time Requirements.** The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply.

(1) An appeal of right in a civil action must be taken within

(a) 21 days after entry of the judgment or order appealed from;

(b) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period; or

(c) another time provided by law.

If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within **14** ~~21~~ days after the final judgment or order, the 21-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within **14** ~~21~~ days after the decision on the motion.

**(B) – (H)** [Unchanged.]

*Staff Comment:* The proposed amendment shortens the time in which a request for the appointment of counsel may be made in appropriate civil actions (principally appeals from orders terminating parental rights). The intent of the proposal is to reduce the time between entry of orders terminating parental rights and final disposition of appeals from such orders. This time for requesting the appointment of counsel conforms to the time stated in proposed amendments to MCR 3.977(I).

## Rule 3.977 Termination of Parental Rights

(A) – (H) [Unchanged.]

### (I) Respondent's Rights Following Termination.

(1) Advice. Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

(a) Respondent is entitled to appellate review of the order.

(b) If respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.

(c) A request for the assistance of an attorney must be made within **14** ~~21~~ days after notice of the order is given **or an order is entered denying a timely filed post-judgment motion.** The court must then give a form to the respondent with the instructions (to be repeated on the form) that if respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).

(d) Respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.

(2) Appointment of Attorney.

(a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall ~~enter an order~~ appointing an attorney **within 14 days after respondent's request is filed.** ~~In the interest of justice, the court may appoint an attorney where the request is filed untimely.~~ **The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.**

(b) **In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on respondent(s), appointed counsel for respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the**

**order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.**

(3) Transcripts. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court **must** ~~may, on motion or its own initiative,~~ order transcripts prepared at public expense.

**(J) [Unchanged.]**

**Staff Comment:** The proposed amendments (1) shorten the deadline for requesting the appointment of counsel following entry of orders terminating parental rights; (2) impose a new deadline for entry of the order appointing counsel in such cases; (3) impose primary responsibility on the chief judge of the court to ensure that the appointment is timely made; and (4) require the appointment of counsel and transcript order to be contained on a form that functions as the claim of appeal. The intent of these proposals is to reduce the time between entry of orders terminating parental rights and final disposition of appeals from such orders. The rules will also obviate 63-day delayed applications for leave to appeal *filed by appointed counsel* from orders terminating parental rights under MCR 3.993(C)(2) and MCR 7.205(G)(5) [effective date 9/1/03].

Subrule (I)(2)(b) is a new rule that, as was stated in the 1989 Staff Comment to MCR 6.425(F)(3), is designed to substantially accelerate the commencement of appeals by having the appointment order also act as a claim of appeal in cases in which the request for a lawyer was timely. The subrule further provides that the State Court Administrator's Office is to approve a form for use by the trial courts that will act as a combination order of appointment, transcript order, and claim of appeal. As stated in the last sentence of the subrule, entry of the order by the trial court constitutes the filing of the claim of appeal for jurisdictional purposes under MCR 7.204. The lawyer who is appointed to represent respondent on appeal is not required to file anything further to perfect the filing of the claim. Defects in the filing of the claim of appeal in the Court of Appeals must be corrected by the trial court but do not affect the validity of the filing.

**STATE OF MICHIGAN**  
**JUDICIAL CIRCUIT – FAMILY DIVISION**  
**COUNTY**

**CLAIM OF APPEAL AND**  
**ORDER APPOINTING COUNSEL**  
**Appeal Under MCR 3.993(A)(2)**

**CASE NO. AND SUFFIX**

Substitution of Counsel

Order Amended

Court Address

Court telephone no.

In re \_\_\_\_\_  
 (Short title of case)

Petitioner		
Name	Address	
Respondent on This Appeal (one respondent per appeal)		
Name	Address	
Children Affected by Order Appealed (list names)		

1. Respondent claims an appeal from an order terminating parental rights under MCR 3.993(A)(2) entered on \_\_\_\_\_ in the Juvenile Division of Family Court, \_\_\_\_\_ County, Michigan, by Judge \_\_\_\_\_. Copies of the final judgment or order being appealed under MCR 3.993(A) (2) and the register of actions are attached for the Court of Appeals and appointed counsel.

2. On \_\_\_\_\_, respondent filed a request for appointment of counsel and a declaration of indigency.

**IT IS ORDERED:**

3. \_\_\_\_\_  
 Name of Appellate Counsel Address

City, State, and Zip

Telephone No.

Bar No.

is appointed counsel for respondent in appellate proceedings. If appointed counsel cannot or will not accept this appointment, counsel shall notify the court immediately.

4. The court reporter(s)/recorder(s) shall file with the trial court clerk the transcripts listed below and any other transcripts requested by counsel in this case not previously transcribed. Transcripts shall be filed within 42 days from the date ordered or requested. [MCR 7.210(B)] Reporter(s)/recorder(s) shall be paid as provided by law.

REPORTER/RECORDER NAME	NUMBER	DATE(S) OF PROCEEDING

5. The clerk shall immediately send to counsel a copy of the transcripts ordered above or requested by counsel as they become available.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Judge

\_\_\_\_\_  
 Bar No.

**CERTIFICATE OF MAILING**

I certify that on this date I mailed a copy of this claim of appeal to appointed counsel, respondent, court reporter(s)/recorder(s), petitioner, the lawyer-guardian ad litem, the guardian ad litem, attorney for the child(ren) (if any), and the Court of Appeals. I also mailed a copy of the final judgment or order being appealed and the register of actions to appointed counsel and the Court of Appeals. I also mailed a copy of the respondent's request for appointment of counsel to appointed counsel, petitioner, the prosecuting attorney and the Court of Appeals.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature